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In the

Supreme Court of the United States

October Term, 1963

No. 601

LESLIE D. STICKLER,

Appellant,

vs.

THE STATE OF OHIO,

Appellee.

On Appeal from the Supreme Court of Ohio

BRIEF IN OPPOSITION TO MOTION TO DISMISS APPEAL

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The motion to dismiss the appeal was received by the Appellant on the 4th day of December, 1964. This brief is due within twenty days thereafter. Paragraph 3, Rule 16, *Revised Rules of the Supreme Court of the United States.*

STATEMENT

Only one matter raised by the Motion of Appellee to Dismiss Appeal mounts an issue not met by the supporting material in Appellant's Jurisdictional Statement. The brief will be confined to that issue.

THE ISSUE

At page 41 of the Jurisdictional Statement speaking of one of three jurors who had seen an offending telecast (*Andrews Statement*, page 59, Jurisdictional Statement) it is said:

> The third disavowed influence, could not be reached for cause under Ohio law. See Ohio Revised Code, Section 2945.25(B) but cf. Palmer v. State, 42 Ohio St. 596 (1885), and was allowed to remain on the jury only because Appellant had exhausted his peremptory challenges (Résumé of the Voir Dire, etc. Appendix 60 et seq.: see Statement of the Case, supra, pp. 12-14).

Appellee in its Motion, at page 17 claims the foregoing statement is erroneous.

Was this statement erroneous in fact?

ARGUMENT

The Appellee concedes that Appellant used up all of the four peremptory challenges allowed under Ohio law. These were used on veniremen Vilas (spelled Villas in the State's motion), Colegrove, Tucker, and Davis. (See page 17, Motion of Appellee to Dismiss Appeal).

Appellant did not say, as Appellee implies, that four peremptory challenges were exhausted at the time Juror Horsley was examined for cause. Rather it was stated that he "could not be reached for cause" because he disavowed being influenced by the telecast. Ohio law does not allow challenge for cause as a *matter of right* under such circumstances [See R.C. 2945.25(B)].

Thereafter when the judgments governing the use of peremptory challenges resulted in the removal of four jurors other than Horsley, he was allowed to remain although he

had seen the telecast and read the newspaper (Folio B, 33-34; 36-38; 73).[1]

Thus it is clear that Appellant did not intend to say and, in fact, did not say that four peremptories had been exhausted when Juror Horsley was reached. Appellant did say that Horsley was allowed to remain only because all the peremptories were ultimately exhausted. He would not have been spared had Appellant had a despotic fifth available.

CONCLUSION

The statement in issue was not erroneous.

In all other particulars the contentions of the Motion of Appellee to Dismiss Appeal are sufficiently answered by the Appellant's Jurisdictional Statement. Accordingly, Appellee's motion should be dismissed and probable jurisdiction noted or the writ of certiorari granted as indicated in the *Conclusion* at page 52 of the Jurisdictional Statement.

Respectfully submitted,

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[1] Although the transcript of the **voir dire** was not available for checking when this was written (the record had been mailed to the Clerk of the Supreme Court of the United States for filing), it is probable that he was a replacement juror filling the place of one removed by peremptory challenge.

This is so because the Appellee concedes that one arbitrary challenge had been expended and none of these would have been exercised until the initial twelve had been challenged, or passed, for cause.